

## **Assembly Bill No. 1610**

### **CHAPTER 709**

An act to amend Sections 1335 and 1337 of the Penal Code, relating to material witnesses.

[Approved by Governor September 28, 2014. Filed with  
Secretary of State September 28, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1610, Bonta. Material witnesses: human trafficking.

Existing law authorizes the defendant or the people, in cases where the defendant has been charged with a serious felony, as defined, or in a case of domestic violence, to have a witness examined conditionally, as specified, if there is evidence that the life of the witness is in jeopardy. Existing law specifies the information required to be stated in the affidavit applying to examine a witness conditionally, including the nature of the offense charged.

This bill would authorize the defendant or the people to apply for an order that the witness be examined conditionally when the defendant has been charged with human trafficking and there is evidence that the victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at trial. This bill would also allow a court to examine a victim or material witness conditionally if the court finds there is a reasonable basis to believe that the witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness or victim from testifying. The bill would conform the affidavit requirements for applying to examine a witness conditionally.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 1335 of the Penal Code is amended to read:

1335. (a) If a defendant has been charged with a public offense triable in a court, he or she in all cases, and the people in cases other than those for which the punishment may be death, may, if the defendant has been fully informed of his or her right to counsel as provided by law, have witnesses examined conditionally in his or her or their behalf, as prescribed in this chapter.

(b) If a defendant has been charged with a serious felony or in a case of domestic violence, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have

a witness examined conditionally as prescribed in this chapter, if there is evidence that the life of the witness is in jeopardy.

(c) (1) If a defendant has been charged with human trafficking, pursuant to Section 236.1, and there is evidence that the victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter.

(2) If a defendant has been charged with human trafficking, pursuant to Section 236.1, and the court finds that there is a reasonable basis to believe that the material witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness or victim from testifying, and if the defendant has been fully informed of his or her right to counsel as provided by law, the court may have a witness examined conditionally as prescribed in this chapter.

(d) If a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter.

(e) For the purposes of this section, the following definitions shall apply:

(1) “Domestic violence” means a public offense arising from acts of domestic violence as defined in Section 13700.

(2) “Serious felony” means a felony listed in subdivision (c) of Section 1192.7 or a violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.

SEC. 2. Section 1337 of the Penal Code is amended to read:

1337. The application shall be made upon affidavit stating all of the following:

(a) The nature of the offense charged.

(b) The state of the proceedings in the action.

(c) The name and residence of the witness, and that his or her testimony is material to the defense or the prosecution of the action.

(d) That any of the following are true:

(1) The witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 65 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy.

(2) That the witness is a victim or a material witness in a human trafficking case who has been or is being intimidated or threatened, as described in paragraph (1) of subdivision (c) of Section 1335, from cooperating with the prosecutor or testifying at trial.

(3) That the witness is a victim or material witness in a domestic violence case who has been or is being intimidated or threatened, as described in subdivision (d) of Section 1335 from cooperating with the prosecutor or testifying at trial.

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